APPENDIX A.

First Amendment to Complaint in Interpleader.

Superior Court of the State of California, for the County of Los Angeles.

Union Bank, a California corporation, Plaintiff, vs. Barbara Rosien; Howard L. Holtzendorff; Peter J. Pitchess, Sheriff, County of Los Angeles; Housing Authority of the City of Los Angeles, a body corporate and politic; Department of Housing and Urban Development, an executive department of the United States of America; Robert C. Weaver, Secretary of Department of Housing and Urban Development; Robert F. Johnson, Deputy Assistant Regional Administrator, Region-6, Housing Assistant Administrator, Department of Housing and Urban Development; Defendants. No. 914171.

The Plaintiff complains of the Defendants and for cause of action alleges:

I

That the Plaintiff, Union Bank, is a banking corporation, organized and incorporated under the laws of the State of California, and authorized to do business in the said state.

II

That the Defendant, Housing Authority of the City of Los Angeles is a public body corporate and politic created and existing by virtue of the laws of the State of California, particularly, the California Health and Safety Code, Section 34,200 et seq.

III

That the Defendant, Department of Housing and Urban Development is an executive department of the United States of America, created and existing by virtue of the laws of the United States, particularly, United States Code, Title 5, Section 624A, which department is the successor to the Public Housing Administration.

IV

That the Defendant Robert C. Weaver, is sued herein in his capacity as Secretary and Head of the Department of Housing and Urban Development.

V

The Defendant, Robert F. Johnson, is sued herein in his capacity as Deputy Assistant Regional Administrator of Region-6, Housing Assistant Administrator, of the Department of Housing and Urban Development.

VI

That prior to the making of the claims hereinafter mentioned, Defendant, Housing Authority of the City of Los Angeles, entered into a General Depositary Agreement with Plaintiff and the Public Housing Administration which functions, powers and duties are now vested in the Secretary of the Department of Housing and Urban Development whereby a commercial checking account was opened and carried with Plaintiff now and during all times mentioned herein; and pursuant to said account, Plaintiff was and is indebted to the Housing Authority of the City of Los Angeles for a certain balance upon said open checking account.

VII

That Plaintiff was served on or about July 7, 1967, upon orders and instructions of Peter J. Pitchess, Sheriff of the County of Los Angeles, with Notice of Garnishment and attached thereto a copy of a Writ of Execution, which was issued by this court in an action entitled *Howard L. Holtzendorff and Barbara Rosien vs. Housing Authority of the City of Los Angeles,* a body corporate and politic, Superior Court Case Number 817285; the amount demended by the Sheriff of Los Angeles County and necessary to satisfy the Writ of Execution on behalf of Plaintiffs Howard L. Holtzendorff and Barbara Rosien is ONE HUNDRED SEVENTY-FIVE THOUSAND THREE HUNDRED TWELVE DOLLARS AND SEVENTY-SIX CENTS ($175,312.76) plus interest of THIRTY-THREE DOLLARS AND SIXTY-THREE CENTS ($33.63) per day until paid; the Sheriff of Los Angeles County pursuant to said writ has demanded that all property levied upon be delivered to Peter J. Pitchess, Sheriff, Civil Division, Los Angeles County Court House, Los Angeles, California 90012.

VIII

That Plaintiff was served on or about August 8, 1967, upon orders and instructions of Peter J. Pitchess, Sheriff of the County of Los Angeles, with Notice of Garnishment and attached thereto a copy of a Writ of Execution, which was issued by this court in an action entitled *Howard L. Holtzendorff and Barbara Rosien vs. Housing Authority of the City of Los Angeles,* a body corporate and politic, Superior Court Case Number 817285; the amount demanded by the Sheriff of Los Angeles County and necessary to satisfy

the Writ of Execution on behalf of Plaintiffs Howard L. Holtzendorff and Barbara Rosien in addition to the amount necessary to satisfy the writ referred to in paragraph VII above is THREE THOUSAND FIVE HUNDRED SIXTY DOLLARS AND THIRTY-FIVE CENTS ($3,560.35) plus interest of SIXTY-NINE CENTS ($.69) per day until paid; the Sheriff of Los Angeles County pursuant to said writ has demanded that all property levied upon be delivered to Peter J. Pitchess, Sheriff, Civil Division, Los Angeles County Court House, Los Angeles, California 90012.

IX

That pursuant to said Writs of Execution and upon instructions of Sheriff Peter J. Pitchess, Plaintiff did on the 7th day of July, 1967, and thereafter on the 8th day of August, 1967, set aside sufficient funds from said open checking account to satisfy the Writs of Execution.

X

Title and right of possession to these funds set aside by the Plaintiff are now claimed by the Defendants, Robert C. Weaver, Robert F. Johnson, and the Department of Housing and Urban Development as successor to the Public Housing Administration on behalf of the United States of America; that pursuant to the terms of the above-mentioned General Depositary Agreement, no withdrawals shall be made from the above-mentioned open checking account without express written authority from the Department of Housing and Urban Development through Robert F. Johnson, Deputy Assistant Regional Administrator.

XI

That Plaintiff has no claim upon the monies set aside for the purpose of satisfying the Writs of Execution, and is ready and willing to and hereby offers to deposit the same in court, or to deliver the same to such person as the court shall direct.

XII

That Plaintiff is wholly unable to decide and determine the respective rights of the Defendants in said amount set aside.

XIII

That Plaintiff is indifferent as to the rights between the various Defendants; that this action is brought without collusion with any Defendant; and that Plaintiff is ready and willing to and hereby offers to deposit the same in court, or deliver the same to such person as the court shall direct.

WHEREFORE THE PLAINTIFF PRAYS JUDGMENT:

1. That the Defendants be restrained from taking any proceeding against the Plaintiff in relation thereto.

2. That said Defendants be required to interplead together and among themselves concerning their respective claims to the said money.

3. That some person be authorized to receive the said money pending such litigation.

4. That upon delivering the same to such receiver the Plaintiff be discharged from all liability to either of the Defendants in relation thereto.

5. And that the Plaintiff's costs of suit be paid out of the same.

Louis Zankich and Lewis W. Sanders
Attorneys for Plaintiff, Union Bank
By Louis Zankich

APPENDIX B.

Answer to First Amended Complaint in Interpleader and Counterclaim of Defendants Barbara Rosien and Howard L. Holtzendorff.

United States District Court, Central District of California.

Union Bank, a California Corporation, Plaintiff, vs Barbara Rosien; Howard L. Holtzendorff; Peter Pitchess, Sheriff, County of Los Angeles; Housing Authority of the City of Los Angeles, A body corporate and politic; Department of Housing and Urban Development, an executive department of the United States of America; Robert C. Weaver, Secretary of Department of Housing and Urban Development; Robert F. Johnson, Deputy Assistant Regional Administrator, Region 6, Housing Assistant Administrator, Department of Housing and Urban Development, Defendants. Civil Action No. 67-1332-R.

The defendants, Barbara Rosien and Howard L. Holtzendorff, answer the First Amended Complaint in Interpleader as follows:

I

Defendants admit the allegations contained in Paragraphs I, II, III, IV, V, VII, VIII, IX, XI, XII and XIII of the First Amended Complaint in Interpleader on file herein.

II

Answering Paragraph VI of the First Amended Complaint in Interpleader, defendants admit that, plaintiff was and is indebted to the Housing Authority of the City of Los Angeles for a certain balance upon said open checking account. Except as herein expressly ad-

mitted, answering defendants are without knowledge or information sufficient to form a belief as to the truth of any of the allegations contained in said Paragraph.

III

Defendants are without knowledge or information sufficient to form a belief as to the truth of any of the allegations contained in Paragraph X of the First Amended Complaint in Interpleader.

COUNTERCLAIM OF BARBARA ROSIEN AND HOWARD L. HOLTZENDORFF

I

On or about November 10, 1964, in an action then pending in the Superior Court of the State of California, County of Los Angeles, Barbara Rosien and Howard L. Holtzendorff, Plaintiffs; versus Housing Authority of the City of Los Angeles, Defendant, a judgment was duly entered awarding the sum of Eighty Five Thousand Five Hundred and Thirty Eight Dollars ($85,538.00) to counterclaimant, Barbara Rosien and One Hundred and Twenty Two Thousand Six Hundred and Sixty One Dollars ($122,661.00) to counterclaimant Howard L. Holtzendorff against defendant, Housing Authority of the City of Los Angeles. A judgment was entered on or about February 5, 1965 in the same action on a cross-complaint filed by defendant Housing Authority of the City of Los Angeles against counter-claimant, Howard L. Holtzendorff, only, awarding the sum of Thirty Eight Thousand Four Hundred and Forty Two Dollars and Sixteen Cents ($38,442.16) to defendant, Housing Authority of the City of Los Angeles.

II

On or about July 6 and July 25, 1967, the counter-claimants, Barbara Rosien and Howard L. Holtzendorff, after allowing for the sum awarded defendant, Housing Authority of the City of Los Angeles on the cross-complaint, duly caused to be issued by the Superior Court of the State of California, County of Los Angeles, Writs of Execution in the amounts of One Hundred and Seventy Five Thousand Three Hundred and Twelve Dollars and Seventy Six Cents ($175,312.76) plus interest of Thirty Three Dollars and Sixty Three Cents ($33.63) per day until paid, and Three Thousand Five Hundred and Sixty Dollars and Thirty Five Cents ($3,560.35) plus interest of Three Dollars and Sixty Nine Cents ($3.69) per day until paid.

III

On or about July 8, 1967 and August 8, 1967, pursuant to said Writs of Execution, defendant Sheriff Peter J. Pitchess, duly levied upon plaintiff, Union Bank, a Writ of Execution duly issued by said Superior Court, which Writ ordered and commanded said Sheriff to satisfy the judgments with interest and costs as provided by law. Union Bank did set aside sufficient funds to satisfy the Writs of Execution, from a commercial checking account which was opened and carried with said Union Bank by defendant, Housing Authority of the City of Los Angeles.

IV

By reason of said Judgments, Writs of Execution and Notices of Garnishment, said counter-claimants are entitled to said sums here interpleaded and none of the other defendants herein have any right, title or interest in or to said sums.

WHEREFORE, defendants and counter-claimants, Barbara Rosien and Howard L. Holtzendorff demand:

1. That this action be dismissed as to defendants and counter-claimants, Barbara Rosien and Howard L. Holtzendorff.

2. That it be adjudicated that defendants and counter-claimants, Barbara Rosien and Howard L. Holtzendorff, are entitled to possession of all of the funds referred to in the First Amended Complaint in Interpleader herein and that defendants, Housing Authority of the City of Los Angeles and the Department of Housing and Urban Development have no interest therein.

3. That the claims of all other parties in this proceeding be denied.

4. That these defendants and counter-claimants be given such other and further relief as may be equitable and proper in the premises.

5. That these defendants and counter-claimants recover their costs herein.

Kaplan, Livingston, Goodwin,
Berkowitz & Selvin

/s/ By Charles E. Jones
Charles E. Jones
Attorneys for Defendants and
Counter-Claimants, Barbara
Rosien and Howard L. Holtzendorff

APPENDIX C.

Answer and Claim of Defendants Department of Housing and Urban Development. Robert C. Weaver and Robert F. Johnson to First Amendment to Complaint in Interpleader, Counterclaim and Cross-Claim Against Barbara Rosien, Howard L. Holtzendorff and Housing Authority of the City of Los Angeles.

United States District Court, Central District of California.

Union Bank, a California corporation, Plaintiff, v. Barbara Rosien, et al., Defendants. Civil No. 67-1332-R.

Filed Dec. 27, 1967.

I. ANSWER

Defendants Department of Housing and Urban Development (hereinafter referred to as HUD), Robert C. Weaver and Robert F. Johnson, by their undersigned attorneys, in answer to plaintiff's first amendment to complaint in interpleader, hereby admit, deny, and allege as follows:

1. Defendants admit the allegations contained in Paragraph I of the amended complaint.

2. Defendants admit the allegations contained in Paragraph II of the amended complaint but, in the interest of clarity further state that the low-rent housing projects of defendant Housing Authority of the City of Los Angeles, and all rights, duties, functions, and property acquired, held, or used pursuant to the United States Housing Act of 1937, 42 U.S.C. 1401, *et seq.*, are in the possession of the United States of America, Department of Housing and Urban Development, Rob-

ert C. Weaver, Secretary, by his designee, Robert P. Johnson and are properties and rights, powers, duties, and functions of the United States of America.

3. Defendants admit the allegations contained in Paragraph III of the amended complaint, except that portion which reads: "which department is the successor to the Public Housing Administration." Defendants allege instead that the Public Housing Administration was abolished and all functions, powers, and duties of said Public Housing Administration, its head and their offices and officers, were vested in the Secretary of the Department of Housing and Urban Development by Public Law 89-174, 79 Stat. 667, 3 U.S.C. 624 *et seq.*

4. The allegations contained in Paragraph IV of the amended complaint are conclusions of law to which no answer is required, but if an answer is deemed to be required the allegations of that paragraph are admitted.

5. The allegations contained in Paragraph V of the amended complaint are conclusions of law to which no answer is required, but if an answer is deemed to be required the allegations of that paragraph are denied.

6. Defendants admit the allegations contained in Paragraph VI of the amended complaint up to the semicolon in line 28 and deny the remaining allegations contained in that paragraph.

7. Defendants admit the allegations contained in Paragraph VII of the amended complaint.

8. Defendants admit the allegations contained in Paragraph VIII of the amended complaint.

9. Defendants admit the allegations contained in Paragraph IX of the amended complaint.

10. Defendants admit the allegations contained in Paragraph X of the amended complaint except that portion which reads "Department of Housing and Urban Development through Robert F. Johnson, Deputy Assistant Regional Administrator"; defendants allege instead that no written withdrawals shall be made from the above-mentioned open checking account without express written authority from the United States of America, Department of Housing and Urban Development, Robert C. Weaver, Secretary, by Robert F. Johnson, designee and delegee of said secretary.

11. Defendants admit the allegations contained in Paragraph XI of the amended complaint.

12 and 13. Defendants deny the allegations contained in paragraphs 12 and 13 of the amended complaint and alleges instead that plaintiff Union Bank is aware of its obligation under its deposit agreement to pay the funds to defendant Weaver through Johnson.

Defendants HUD, Weaver and Johnson deny each and every allegation not hereinbefore expressly admitted.

WHEREFORE, defendants HUD, Weaver and Johnson pray that:

1. The court grant judgment declaring that they are entitled to the bank deposits subject to this garnishment proceeding;

2. That this court issue an injunction restraining defendants Holtzendorff and Rosien from enforcing or attempting to enforce the judgment in Superior Court Case No. 817285 by writ of garnishment against the funds now held by plaintiff Union Bank;

3. That the court grant such further relief as may be just and proper.

II. CLAIM OF DEFENDANTS HUD, WEAVER AND JOHNSON TO FUNDS HELD BY PLAINTIFF UNION BANK.

By way of claim, the defendant Department of Housing and Urban Development, Robert C. Weaver, Secretary of the Department of Housing and Urban Development, and Robert F. Johnson, delegee and designee of said Secretary in possession of the federally assigned projects of the Housing Authority of the City of Los Angeles under the United States Housing Act of 1937 allege:

1. The United States of America, Department of Housing and Urban Development, Robert C. Weaver, Secretary, (hereinafter referred to as "HUD"), administers the United States Housing Act of 1937, 42 U.S.C. 1401 *et seq.* (hereinafter referred to as USHAct). Pursuant to the requirements contained in said Act, HUD enters into contracts (denominated annual contributions contracts) with state public bodies of low-rent housing projects to house families and the elderly of low income who are unable to obtain decent, safe, and sanitary housing at rents they can afford.

2. The United States of America, Department of Housing and Urban Development, Robert C. Weaver, Secretary, has entered into two such annual contributions contracts, denominated Contracts SF 95 and SF 113 with the Housing Authority of the City of Los Angeles for the development of some 19 low-rent housing projects having an aggregate capital cost of approximately $63,500,000, pursuant to the United States

Housing Act of 1937. The United States of America, Department of Housing and Urban Development, Robert C. Weaver, Secretary, has entered into two other contracts denominated Administration Contracts for the operation for low-rent housing purposes of Projects CAL-4-23 and CAL-4-24. The contracts are annexed hereto and made a part hereof as Exhibit 1.

3. On April 19, 1961, the Housing Authority of the City of Los Angeles entered into a contract with Howard L. Holtzendorff for employment. This contract by its terms divested the housing authority of power to administer the housing projects and vested such power in Howard L. Holtzendorff until December 31, 1967.

4. On April 19, 1961, the Housing Authority of the City of Los Angeles entered into a contract with Barbara Rosien for employment. This contract by its terms divested the housing authority of the power to administer the housing projects and to vest such power in Barbara Rosien in the absence of Howard L. Holtzendorff until December 31, 1967.

5. Early in December 1962, representatives of the Housing Authority of the City of Los Angeles verbally informed HUD of the provisions of the employment contracts of April 19, 1961, and forwarded copies of the contracts to HUD on December 6, 1962.

6. The USHAct of 1937 and the annual contributions contracts thereunder between HUD and the Housing Authority of the City of Los Angeles require that the housing authority have power to administer the housing projects in such manner as to promote serviceability, efficiency, economy, and stability. Any di-

vestiture of this power by action of the housing authority constitutes a breach and default under said annual contributions contracts. The divestiture contained in the above employment contracts was *ulta vires* of the USHAct of 1937, and null and void. HUD made determinations to this effect and so advised the housing authority. HUD also advised the housing authority that it would not permit any expenditures of monies derived from operation of the federally assisted low-rent housing projects for payment to defendants Holtzendorff and Rosien of any salary under said employment contracts.

7. On March 26, 1963, the Housing Authority of the City of Los Angeles discharged defendant Holtzendorff and abolished the position of defendant Rosien.

8. Shortly thereafter, and as a result of the aforesaid illegal employment contracts followed by the discharge of Holtzendorff and Rosien, the Housing Authority of the City of Los Angeles was in disarray and unable to perform its obligations under the United States Housing Act of 1937 and the contracts pursuant thereto in such manner as to promote serviceability, efficiency, economy, and stability. HUD made a determination to this effect.

9. After discussion with the Housing Authority of the City of Los Angeles, HUD determined that the Housing Authority of the City of Los Angeles was in default of its annual contributions contracts in that as a result of the default of the Housing Authority in entering into the aforesaid illegal employment contracts followed by discharge of Holtzendorff and Rosien the projects were not being operated in such manner as to promote serviceability, efficiency, econ-

omy, and stability, and, were it not for the provisions of section 22 of the United States Housing Act of 1937 and section 504 of the annual contributions contracts, annual contributions could not be paid. The Housing Authority of the City of Los Angeles agreed.

10. On April 11, 1963, before 12 m. Pacific Standard Time, the than chief Federal officer of the fedrally assisted low-rent housing program, Marie C. McGuire, took possession of the federally assisted low-rent housing projects of the Housing Authority of the City of Los Angeles, together with all property, real and personal, all rents and revenues, and all powers, rights, and duties of the Housing Authority appertaining to such projects, under section 22 of the United States Housing Act of 1937 and section 501 of the annual contributions contracts pursuant thereto. Prior to 12 m. Pacific Standard Time, the Bank of America N.T.S.A., in which the commercial checking account now in the Union Bank was then on deposit was notified that said chief Federal officer had taken possession of the federally assisted low-rent housing projects of the Housing Authority of the City of Los Angeles, together with all rights, powers, duties, functions, and property appurtenant thereto. The Bank was also notified that no checks or orders on said account should be honored except checks or orders bearing the signatures of the Federal officer in possession.

11. Herman Selvin, attorney for defendants Holtzendorff and Rosien, on April 16, 1963, was informed in writing that Marie C. McGuire, chief Federal officer of the federally assisted low-rent housing program, took possession of the federally assisted projects of the Housing Authority of the City of Los Angeles, on

April 11, 1963, and that any communications with the Authority should be directed to her, attention her designee. On April 16, 1963, in a press conference televised by two Los Angeles stations, Federal representatives made it clear that the Federal Government was in possession of the housing projects of the Housing Authority of the City of Los Angeles, and that all decisions would have to reflect the Federal Government's interests and would be final.

12. On April 18, 1963, a suit styled *Holtzendorff and Rosien v. Housing Authority of the City of Los Angeles,* No. 817825, was filed in the Superior Court of the State of California in and for the County of Los Angeles. By amended complaint Holtzendorff and Rosien sought damages for breach of their employment contracts from the Housing Authority of the City of Los Angeles.

13. No notices, summons, or other legal document on behalf of Barbara Rosien or Howard Holtzendorff was ever served or delivered to HUD or to any officer or employee of HUD in any manner or at any place in the suit styled *Holtzendorff and Rosien v. Housing Authority of the City of Los Angeles,* No. 817025, Superior Court of the State of California for the County of Los Angeles.

14. The residual receipts from the Projects under Contracts SF 95 and SF 113 and in possession of Robert C. Weaver by Robert F. Johnson must be in the hands of the fiscal agent for the bonds issued in connection with such projects by April 16, 1968. Any further amount needed to meet principal and interest on these bonds of the Housing Authority of the City

of Los Angeles must be transmitted by check on the Treasurer of the United States from money appropriated by the Congress of the United States and received by such fiscal agent bank by April 15, 1968. The residual receipts from the operation of such projects are on deposit in the commercial checking account at the Union Bank and are being held and sequestrated pursuant to an order of levy and garnishment issued by the Superior Court of the State of California in and for the County of Los Angeles to enforce a judgment obtained in *Holtzendorff and Rosien v. Housing Authority of the City of Los Angeles*, No. 817285. The residual receipts from the operations of Projects CAL-4-23 and 4-24 are similarly set aside and sequestrated, residual receipts from Projects CAL-4-23 and 4-24 must be turned over to HUD upon notification by HUD any time after January 1, 1968.

15. HUD will be irreparably damaged unless residual receipts from Projects CAL-4-23 and 4-24 are available to it shortly after January 1, 1968. HUD will be irreparably damaged if residual receipts from all projects under SF 95 and SF 113 are not in the hands of the paying agent by April 15, 1968.

16. The assets of the federally assisted projects in possession of Robert C. Weaver by Robert F. Johnson have been wrongfully and illegally charged with payment of the salaries of Howard L. Hotzendorff and Barbara Rosien for the period April 19, 1961 to March 26, 1963, to wit, for Howard L. Hotlzendorff the amount of $42,495.76, for Barbara Rosien, the amount of $32,312.50, which amounts Howard L. Hotzendorff and Barbara Rosien refuse to pay.

WHEREFORE, defendants HUD, Weaver, and Johnson pray that:

1. The court grant judgment declaring that they are entitled to the bank deposits subject to this garnishment proceeding;

2. That this court issue an injunction restraining defendants Holtzendorff and Rosien from enforcing or attempting to enforce the judgment in Superior Court Case No. 817825 by writ of garnishment against the funds now held by plaintiff Union Bank;

3. That the court grant such further relief as may be just and proper.

III. COUNTERCLAIM AND CROSS-CLAIM, PURSUANT TO RULES 13 AND 14, FEDERAL RULES OF CIVIL PROCEDURE AGAINST DEFENDANTS BARBARA AND HOWARD L. HOLTZENDORFF.

By way of counterclaim and cross-claim against the defendants Holtzendorff and Rosien, defendants Department of Housing and Urban Development, Robert C. Weaver, and Robert F. Johnson hereby allege as follows:

1. The United States of America, Department of Housing and Urban Development, Robert C. Weaver, Secretary, (hereinafter referred to as "HUD"), administers the United States Housing Act of 1937, 42 U.S.C. 1401 *et seq.* (hereinafter referred to as USH-Act). Pursuant to the requirements contained in said Act, HUD enteres into contracts (denominated annual contributions contracts) with state public bodies (denominated "housing authorities") for the construction

and administration of low-rent housing projects to house families and the elderly of low income who are unable to obtain decent, safe, and sanitary housing at rents they can afford.

2. The United States of America, Department of Housing and Urban Development, Robert C. Weaver, Secretary, has entered into two such annual contributions contracts, denominated Contracts SF 95 and SF 113 with the Housing Authority of the City of Los Angeles for the development of some 19 low-rent housing projects having an aggregate capital cost of approximately $63,500,000, pursuant to the United States Housing Act of 1937. The United States of America, Department of Housing and Urban Development, Robert C. Weaver, Secretary, has entered into two other contracts denominated Administration Contracts for the operation for low-rent housing purposes of Projects Cal-4-23 and CAL-4-24. The contracts are annexed hereto and made a part hereof as Exhibit 1.

3. On April 19, 1961, the Housing Authority of the City of Los Angeles entered into a contract with Howard L. Holtzendorff for employment. This contract by its terms divested the housing authority of power to administer the housing projects and vested such power in Howard L. Holtzendorff until December 31, 1967, and was null and void and of no effect. Pursuant to said illegal contract for the period April 19, 1961 to March 25, 1963, defendant Holtzendorff was paid $42,495.76 from the assets of the federally assisted projects in possession of Robert C. Weaver by Robert F. Johnson.

4. On April 19, 1961, the Housing Authority of the City of Los Angeles entered into a contract with

Barbara Rosien for employment. This contract by its terms divested the housing authority of the power to administer the housing projects and to vest such power in Barbara Rosien in the absence of Howard L. Holtzendorff until December 31, 1967, and was null and void and of no effect. Pursuant to said illegal contract for the period April 19, 1961 to March 26, 1963, defendant Rosien was paid $32,312.50 from the assets of the federally assisted projects in possession of Robert C. Weaver by Robert F. Johnson.

5. Early in December 1962, representatives of the Housing Authority of the City of Los Angeles verbally informed HUD of the provisions of the employment contracts of April 19, 1961, and forwarded copies of the contracts to HUD on December 6, 1962.

6. The USHAct of 1937 and the annual contributions contracts thereunder between HUD and the Housing Authority of the City of Los Angeles require that the housing authority have power to administer the housing projects in such manner as to promote serviceability, efficiency, economy, and stability. Any divestiture of this power by action of the housing authority constitutes a breach and default under said annual contributions contracts. The divestiture contained in the above employment contracts was *ultra vires* of the USHAct of 1937, and null and void. HUD made determinations to this effect and so advised the housing authority. HUD also advised the housing authority that it would not permit any expenditures of monies derived from operation of the federally assisted low-rent housing projects for payment to defendants Holtzendorff and Rosien of any salary under said employment contracts.

7. On March 26, 1963, the Housing Authority of the City of Los Angeles discharged defendant Holtzendorff and abolished the position of defendant Rosien.

8. Shortly thereafter, and as a result of the aforesaid illegal employment contracts followed by the discharge of Holtzendorff and Rosien, the Housing Authority of the City of Los Angeles was in disarray and unable to perform its obligations under the United States Housing Act of 1937 and the contracts pursuant thereto in such manner as to promote serviceability, efficiency, economy, and stability. HUD made a determination to this effect.

9. After discussion with the Housing Authority of the City of Los Angeles, HUD determined that the Housing Authority of the City of Los Angeles was in default of its annual contributions contracts in that as a result of the default of the Housing Authority in entering into the aforesaid illegal employment contracts followed by discharge of Holtzendorff and Rosien the projects were not being operated in such manner as to promote serviceability, efficiency, economy, and stability, and, were it not for the provisions of section 22 of the United States Housing Act of 1937 and section 504 of the annual contributions contracts, annual contributions could not be paid. The Housing Authority of the City of Los Angeles agreed.

10. On April 11, 1963, before 12 m. Pacific Standard Time, the then chief Federal officer of the federally assisted low-rent housing program, Marie C. McGuire took possession of the federally assisted low-rent housing projects of the Housing Authority of the City of Los Angeles, together with all property, real and personal, all rents and revenues, and all powers, rights,

and duties of the Housing Authority appertaining to such projects, under Section 22 of the United States Housing Act of 1937 and section 501 of the annual contributions contracts pursuant thereto. Prior to 12 m. Pacific Standard Time, the Bank of America N.T.S.A., in which the commercial checking account now in the Union Bank was then on deposit was notified that said chief Federal officer had taken possession of the federally assisted low-rent housing projects of the Housing Authority of the City of Los Angeles, together with all rights, powers, duties, functions, and property appurtenant thereto. The Bank was also notified that no checks or orders on said account should be honored except checks or orders bearing the signature of the Federal officer in possession.

11. Hermon Selvin, attorney for defendants Holtzendorff and Rosien, on April 16, 1963, was informed in writing that Marie C. McGuire, chief Federal officer of the federally assisted low-rent housing program, took possession of the federallly assisted projects of the Housing Authority of the City of Los Angeles, on April 11, 1963, and that any communications with the Authority should be directed to her, attention her designee. On April 16, 1963, in a press conference televised by two Los Angeles stations, Federal representatives made it clear that the Federal Government was in possession of the housing projects of the Housing Authority of the City of Los Angeles, and that all decisions would have to reflect the Federal Government's interests and would be final.

12. On April 18, 1963, a suit styled *Holtzendorff and Rosien v. Housing Authority of the City of Los Angeles,* No. 817285, was filed in the Superior Court

of the State of California in and for the County of Los Angeles. By amended complaint Holtzendorff and Rosien sought damages for breach of their employment contracts from the Housing Authority of the City of Los Angeles. The court in the aforementioned lawsuit awarded a judgment for defendants Holtzendorff and Rosien in the amount of $175,312.76, plus interest of $33.63 per day until paid. An action in garnishment has been filed against plaintiff Union Bank for the armount of said judgment in state court by defendants Holtzendorff and Rosien, which action has been removed to this court.

13. No notices, summons, or other legal document on behalf of Barbara Rosien or Howard Holtzendorff was ever served or delivered to HUD or to any officer or employee of HUD in any manner or at any place in the suit styled *Holtzendorff and Rosien v. Housing Authority of the City of Los Angeles,* No. 817285, Superior Court of the State of California for the County of Los Angeles.

WHEREFORE, defendants HUD, Weaver and Johnson pray that:

1. The court grant judgment in favor of HUD, Weaver and Johnson against Holtzendorff for the amount of $42,495.76, wrongfully paid out to him from the assets of the federally assisted projects in possession of Robert C. Weaver by Robert F. Johnson under the illegal contract with the Housing Authority and against Barbara Rosien for the amount of $32,-312.50 wrongfully paid out to her from the assets of the federally assisted projects in possession of Robert C. Weaver by Robert F. Johnson under the illegal contract with the Housing Authority.

2. That this court issue an injunction restraining defendants Holtzendorff and Rosien from enforcing or attempting to enforce the judgment in Superior Court Case No. 817285 by writ of garnishment or otherwise against the funds now held by plaintiff Union Bank.

3. That the court permanently enjoin defendants Howard L. Holtzendorff and Barbara Rosien from enforcing or attempting to enforce the judgment in state court action No. 817285 out of any funds originating from the United States through defendant HUD.

4. Pending the determination of the claims, counterclaims and cross-claims of defendants HUD, Weaver and Johnson, and to protect its jurisdiction in the premises, that the court issue a preliminary injunction restraining defendants Holtzendorff and Rosien from enforcing or attempting to enforce the judgment in state court action No. 817285 against the funds held by plaintiff Union Bank and subject to the writ of garnishment herein.

5. That the court grant such other relief as may be just and proper.

IV. COUNTERCLAIM AND CROSS-CLAIM PURSUANT TO RULES 13 AND 14, FEDERAL RULES OF CIVIL PROCEDURE AGAINST DEFENDANT HOUSING AUTHORITY OF THE CITY OF LOS ANGELES.

By way of counterclaim and cross-claim against the defendant Housing Authority of the City of Los Angeles, defendants Department of Housing and Urban Development, Robert C. Weaver and Robert F. Johnson hereby alleges as follows:

1. The United States of America, Department of Housing and Urban Development, Robert C. Weaver, Secretary, (hereinafter referred to as "HUD"), administers the United States Housing Act of 1937, 42 U.S.C. 1401 *et seq.* (hereinafter referred to as USH-Act). Pursuant to the requirements contained in said act, HUD enters into contracts (denominated annual contributions contracts) with state public bodies (denominated "housing authorities") for the construction and administration of low-rent housing projects to house families and the elderly of low income who are unable to obtain decent, safe, and sanitary housing at rents they can afford.

2. The United States of America, Department of Housing and Urban Development, Robert C. Weaver, Secretary, has entered into two such annual contributions contracts, denominated Contracts SF 95 and SF-113 with the Housing Authority of the City of Los Angeles for the development of some 19 low-rent housing projects having an aggregate capital cost of approximately $53,500,000, pursuant to the United States Housing Act of 1937. The United States of America, Department of Housing and Urban Development, Robert C. Weaver, Secretary, has entered into two other contracts denominated Administration Contracts for the operation for low-rent housing purposes of Projects CAL-4-23 and CAL-4-24. The contracts are annexed hereto and made a part hereof as Exhibit 1.

3. On April 19, 1961, the Housing Authority of the City of Los Angeles entered into a contract with Howard L. Holtzendorff for employment. This contract by its terms divested the housing authority of power to administer the housing projects and vested

such power in Howard L. Holtzendorff until December 31, 1967, and was null and void and of no effect. Pursuant to said illegal contract for the period April 19, 1961 to March 26, 1963 defendant Holtzendorff was paid $42,495.76 from the assets of the federally assisted projects in possession of Robert C. Weaver by Robert F. Johnson.

4. On April 19, 1961, the Housing Authority of the City of Los Angeles entered into a contract with Barbara Rosien for employment. This contract by its terms divested the housing authority of the power to administer the housing projects and to vest such power in Barbara Rosien in the absence of Howard L. Holtzendorff until December 31, 1967, and was null and void and of no effect. Pursuant to said illegal contract for the period April 19, 1961 to March 26, 1963, defendant Rosien was paid $32,312.50 from the assets of the federally assisted projects in possession of Robert C. Weaver by Robert F. Johnson.

5. Early in December 1962, representatives of the Housing Authority of the City of Los Angeles verbally informed HUD of the provisions of the employment contracts of April 19, 1961, and forwarded copies of the contracts to HUD on December 6, 1962.

6. The USHAct of 1937 and the annual contributions contracts thereunder between HUD and the Housing Authority of the City of Los Angeles require that the housing authority have power to administer the housing projects in such manner as to promote serviceability, efficiency, economy, and stability. Any divesture of this power by action of the housing authority constitutes a breach and default under said annual contributions contracts. The divestiture contained in the

above employment contracts was *ultra vires* of the USHAct of 1937, and null and void. HUD made determinations to this effect and so advised the housing authority. HUD also advised the housing authority that it would not permit any expenditures of monies derived from operation of the federally assisted low-rent housing projects for payment to defendants Holtzendorff and Rosien of any salary under said employment contracts.

7. On March 26, 1963, the Housing Authority of the City of Los Angeles discharged defendant Holtzendorff and abolished the position of defendant Rosien.

8. Shortly thereafter, and as a result of the aforesaid illegal employment contracts followed by the discharge of Holtzendorff and Rosien, the Housing Authority of the City of Los Angeles was in disarray and unable to perform its obligations under the United States Housing Act of 1937 and the contracts pursuant thereto in such manner as to promote serviceability, efficiency, economy, and stability. HUD made a determination to this effect.

9. After discussion with the Housing Authority of the City of Los Angeles, HUD determined that the Housing Authority of the City of Los Angeles was in default of its annual contributions contracts in that as a result of the default of the Housing Authority in entering into the afore-said illegal employment contracts followed by discharge of Holtzendorff and Rosien the projects were not being operated in such manner as to promote serviceability, efficiency, economy, and stability, and, were it not for the provisions of section 22 of the United States Housing Act of 1937 and sec-

tion 504 of the annual contributions contracts, annual contributions could not be paid. The Housing Authority of the City of Los Angeles agreed.

10. On April 11, 1963, before 12 m. Pacific Standard Time, the then chief Federal officer of the federally assisted low-rent housing program, Marie C. McGuire, took possession of the federally assisted low-rent housing projects of the Housing Authority of the City of Los Angeles, together with all property, real and personal, all rents and revenues, and all powers, rights, and duties of the Housing Authority appertaining to such projects, under section 22 of the United States Housing Act of 1937 and section 501 of the annual contributions contracts pursuant thereto. Prior to 12 m. Pacific Standard Time, the Bank of America N.T.S.A., in which the commercial checking account now in the Union Bank was then on deposit was notified that said chief Federal officer had taken possession of the federally assisted low-rent housing projects of the Housing Authority of the City of Los Angeles, together with all rights, powers, duties, functions, and property appurtenant thereto. The Bank was also notified that no checks or orders on said account should be honored except checks or orders bearing the signature of the Federal officer in possession.

11. Herman Selvin, attorney for defendants Holtzendorff and Rosien, on April 16, 1963, was informed in writing that Marie C. McGuire, chief Federal officer of the federally assisted low-rent housing program, took possession of the federally assisted projects of the Housing Authority of the City of Los Angeles, on April 11, 1963, and that any communications with the Authority should be directed to her, attention her

designee. On April 16, 1963, in a press conference televised by two Los Angeles stations, Federal representatives made it clear that the Federal Government was in possession of the housing projects of the Housing Authority of the City of Los Angeles, and that all decisions would have to reflect the Federal Government's interests and would be final.

12. On April 13, 1963, a suit styled *Holtzendorff and Rosien v. Housing Authority of the City of Los Angeles,* No. 817285, was filed in the Superior Court of the State of California in and for the County of Los Angeles. By amended complaint Holtzendorff and Rosien sought damages for breach of their employment contracts from the Housing Authority of the City of Los Angeles. The court in the aforementioned lawsuit awarded a judgment for defendants Holtzendorff and Rosien in the amount of $175,312.76 plus interest of $33.63 per day until paid. An action in garnishment has been filed against plaintiff Union Bank for the amount of said judgment in state court by defendants Holtzendorff and Rosien, which action has been removed to this court.

13. No notices, summons, or other legal document on behalf of Barbara Rosien or Howard Holtzendorff was ever served or delivered to HUD or to any officer or employee of HUD in any manner or at any place in the suit styled *Holtzendorff and Rosien v. Housing Authority of the City* of Los Angeles, No. 817285, Superior Court of the State of California for the County of Los Angeles.

14. The residual receipts from the Projects under contracts SF 95 and SF 113 and in possession of Robert C. Weaver by Robert F. Johnson must be in

the hands of the fiscal agent for the bonds issued in connection with such projects by April 15, 1968. Any further amount needed to meet principal and interest on these bonds of the Housing Authority of the City of Los Angeles must be transmitted by check on the Treasurer of the United States from money appropriated by the Congress of the United States and received by such fiscal agent bank by April 15, 1968. The residual receipts from the operation of such projects are on deposit in the commercial checking account at the Union Bank and are being held and sequestrated pursuant to an order of levy and garnishment issued by the Superior Court of the State of California in and for the County of Los Angeles to enforce a judgment obtained in *Holtzendorff and Rosien v. Housing Authority of the City of Los Angeles,* No. 817285. The residual receipts from the operations of Projects CAL-4-23 and 4-24 are similarly set aside and sequestrated. Residual receipts from Projects CAL-4-23 and CAL-4-24 must be turned over to HUD upon notification by HUD any time after January 1, 1968.

15. HUD will be irreparably damaged unless residual receipts from Projects CAL-4-23 and 4-24 are available to it shortly after January 1, 1968. HUD will be irreparably damaged if residual receipts from all projects under SF 95 and SF 113 are not in the hands of the paying agent by April 15, 1968.

16. Beginning on or about January 15, 1966, the Housing Authority of the City of Los Angeles has repeatedly requested HUD to reconvey possession of the federally assisted low-rent housing projects at Los Angeles to said Housing Authority. Letters and resolutions of said Housing Authority addressed to HUD

have demanded reconveyance and return of such projects to said Housing Authority. HUD, Weaver and Johnson believe they are threatened with suit by the Housing Authority of the City of Los Angeles for the reconveyance of possession of the federally assisted projects to it. Defendants HUD, Weaver and Johnson also believe that if possession is reconveyed to defendant Housing Authority said Housing Authority will satisfy the judgments in state court action No. 817285 out of the funds now held by plaintiff Union Bank which funds are assets of the federally assisted projects now in possession of Robert C. Weaver by Robert F. Johnson.

17. The assets of the federally assisted projects in possession of Robert C. Weaver by Robert F. Johnson have been wrongfully and illegally charged with payment of the salaries of Howard L. Holtzendorff and Barbara Rosien for the period April 19, 1961 to March 26, 1963, to wit, for Howard L. Holtzendorff the amount of $42,495.76; for Barbara Rosien, the amount of $32,312.50, which amounts Howard L. Holtzendorff and Barbar Rosien refuse to pay.

WHEREFORE, defendants HUD, Robert C. Weaver and Robert F. Johnson pray that:

1. The court grant judgment in favor of HUD, Robert C. Weaver and Robert F. Johnson against the Housing Authority of the City of Los Angeles for the amounts of $42,495.76 and $32,312.50, respectively, paid out to defendants Howard L. Holtzendorff and Barbara Rosien from the assets of the federally assisted projects in possession of Robert C. Weaver by Robert F. Johnson under the illegal contracts between those parties.

2. Permanently enjoining defendant Housing Authority of the City of Los Angeles from satisfying the judgment in state court action No. 817285 out of funds originating from the United States through defendant HUD.

3. That the court grant such other relief as may be just and proper.

Wm. Matthew Byrne, Jr.
United States Attorney

Frederick M. Brosio, Jr.
Assistant U.S. Attorney

James R. Dooley
Assistant U.S. Attorney